

**FAIR POLITICAL PRACTICES COMMISSION**  
**Memorandum**

**To:** Chairman Randolph, Commissioners Blair, Downey, Huguenin, and Remy

**From:** William J. Lenkeit, Senior Commission Counsel, Legal Division  
John W. Wallace, Assistant General Counsel  
Luisa Menchaca, General Counsel

**Subject:** Prenotice Discussion of Amendments to the “Public Generally” Exception to the Conflict-of-Interest Provisions — Regulation 18707.1, and Adoption of Regulation 18707.10.

**Date:** August 24, 2006

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**I. EXECUTIVE SUMMARY**

This regulatory project examines Commission rules for applying the “public generally” exception of the conflict-of-interest provisions of the Political Reform Act (the “Act”),<sup>1</sup> to a public official’s interest in real property. The Act’s conflict-of-interest provisions are set forth in chapter 7 (sections 87100 – 87500). Section 87100, the basic conflict-of-interest statute, states that no public official “shall make, participate in making, or in any way attempt to use his [or her] official position to influence a governmental decision in which he [the official] knows or has reason to know that he [or she] has a financial interest.”

Section 87103 states that “[a] public official has a financial interest in a decision... if it is reasonably foreseeable that the decision will have a material financial effect, *distinguishable from its effect on the public generally*, on the official, a member of his or her [the official’s] immediate family,” or on any of certain enumerated economic interests. (Emphasis added.) An interest in real property is one of these enumerated economic interests.

Under the “public generally” exception provided in regulation 18707.1, the material financial effect of a governmental decision on a public official’s real property economic interest is indistinguishable from its effect on the public generally if the decision affects a “significant segment” of the public in “substantially the same manner” as it will affect the public official’s economic interest. For real property economic interests, “significant segment” is defined as: (1) “[t]en percent or more of all property owners or all homeowners in the jurisdiction of the official’s agency or the district the

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<sup>1</sup> Government Code sections 81000 – 91014. Commission regulations appear at title 2, sections 18109-18997, of the California Code of Regulations. All statutory references are to the Government Code unless otherwise indicated.

official represents;" or (2) "5,000 property owners or homeowners in the jurisdiction of the official's agency."

Accordingly, even if an official has a prohibited conflict of interest under the Act, the official may, nevertheless, participate in the governmental decision if the "public generally" exception is met.

Staff believes that it is appropriate at this time for the Commission to consider revising the provisions of the "public generally" exception as discussed herein. This regulatory project includes proposed amendments to the "significant segment" element of the "public generally" exception for residential properties under regulation 18707.1(b)(1)(B) and clarifying amendments to the "substantially the same manner" test under regulation 18707.1(b)(2). Additionally, staff proposes the adoption of new regulation 18707.15 applicable to small jurisdictions.

First – proposed amendments to the "significant segment" test for residential properties. The proposed amendments to regulation 18707.1(b)(1)(B) would delete the word "homeowners" and substitute the term "residential property owners" in its place. Currently, "homeowner" is defined as someone who owns the house in which he or she lives. This definition excludes residential properties that are used as rentals. Because the financial affects of a governmental decision on residential real property does not fluctuate depending on who resides on the property, staff believes the current definition unnecessarily excludes rental properties from the "significant segment" .

Second – proposed amendments the "substantially the same manner" test for real property. The proposed amendments to the "substantially the same manner" test under regulation 18707.1(b)(2) contain three elements. First, staff proposes development of a list of factors that a public official would need to consider in determining if the financial effects on his or her property are "substantially the same" as the financial effects on a "significant segment" of other property owners within the jurisdiction or district. Second, staff proposes that the advice provided in the *Berger* Advice Letter, No. 05-054, establishing a minimum range for financial effects on real property that are considered "substantially the same," be codified. Finally, staff offers an alternative method that would provide that financial effects on real property are considered to be "substantially the same" when the percentage of the effect is the same for all properties within the "significant segment" as it is for the official's property. In other words, a five-percent increase on the official's property would be considered "substantially the same" as a five-percent increase on other properties irrespective of the values of those properties.

Third, staff proposes adoption of regulation 18707.15. Finally, staff proposes adoption of a new regulation applicable solely to a public official's economic interest in his or her domicile when the public official resides in a small jurisdiction – defined as having a population of 25,000 or less with a geographic area of ten square miles or less. This regulation is a recodification of most of the provisions of the original "public generally" exception for small jurisdictions adopted in 1990. After several amendments

to and renumbering of the original regulation, the Commission repealed the small jurisdiction exception in February 2003 when it reduced the boundaries applicable for the directly/indirectly involved property test to 500 feet for all decisions. Because of continuing concerns raised by representatives of small jurisdictions, staff proposes that the Commission reexamine the issue of a special “public generally” exception for small jurisdictions applying solely to the public official’s domicile.

## II. BACKGROUND

This regulatory project developed as a result of two events. First, in June 2005 staff was asked to provide advice regarding the application of the “substantially the same manner” test for a governmental decision in the City of Santa Paula. (See *Berger* Advice letter, *supra*). The governmental decision involved the annexation of approximately 2,000 acres to be used for a residential development of up to 2,500 units. The development, if approved, projected to increase the city’s area by approximately seventy-five-percent and, if all 2,500 units were approved, additionally increase the city’s population by up to 10,000, a thirty-five-percent increase.

The requestor provided specific information as to the financial effects on real property within the city that could be reasonably expected if the development was approved. Because of the enormity of the project, the facts indicated that all real property owners within the jurisdiction would experience a general percentage increase in their property values, with the increase offset somewhat for property owners who lived within certain traffic corridors resulting in increased traffic and noise affecting their property values. Under the facts presented, staff provided advice as to the application of the “substantially the same manner” test where the *percentage increase* on property values was the same for a “significant segment” as it was for the property of the public official (see discussion under Decision Point 2). The advice provided a formula to be used to establish a range for financial effects. If the financial effects of the decision on the official’s property were within that range, staff advised that the “substantially the same manner” test was met.

Second, in August 2005 the Commission received a letter from Lisa Foster raising issues regarding the application of the “public generally” exception to residential property in small cities with a high rate of vacation rentals. (See Letter to Commission from Lisa A. Foster, August 22, 2005, attached.)

As an attorney representing a number of small municipalities in San Diego County, including Solana Beach and Imperial Beach, where many of the properties are used as vacation rentals, Ms. Foster pointed out that in many cases public officials who owned their residence were precluded from applying the “public generally” exception because residential rental properties were not included in determining the “significant segment”, even though the values of those properties were affected in “substantially the same manner” as identical properties that were not being rented. Because of this, the “significant segment” test was difficult to meet. (See discussion under Decision Point 1).

On July 11, 2006, staff held an interested persons' meeting to receive public input regarding possible amendments to the regulations regarding the "public generally" exception, including codifying the advice provided in the *Berger* letter, as well as other areas of concern regarding interpretation of the "significant segment" and "substantially the same manner" tests used to apply the exception. During that meeting, three separate areas of concern were raised by the participants:

First: In determining the "significant segment" for financial effects on real property, regulation 18707.1 uses the terms "all property owners" or "all homeowners." The term homeowners does not include owners of homes that are used as rental properties. The Commission was asked to consider modifying the regulation to include the previously deleted term "households," or some other appropriate term, that would allow the consideration of rental property in determining the "significant segment".

Second: The general response at the meeting was that the Commission should develop a list of factors that needed to be considered to determine whether financial effects are considered "substantially the same." In other words, what factors does a public official need to examine in comparing his or her property against other properties in the "significant segment" to determine if the financial effects of a decision are substantially the same?

Third: A number of representatives of small jurisdictions raised the issue of a need for the Commission to reconsider a separate "public generally" exception for small jurisdictions. They asserted that in many of these jurisdictions, because of the size of the jurisdiction many of the public officials involved in the decision commonly live within 500 feet of the governmental decision and are presumptively precluded from participating in the decision. They contended that, in many cases, the "public generally" exception was difficult to apply, and that these officials would, therefore, routinely decline to participate in the decision to avoid any possible conflict of interest. Due to these factors, representatives of these small jurisdictions requested that the Commission consider returning to the previous 300 foot rule for jurisdictions below a certain size.

The amendments offered herein address these concerns.

### III. DISCUSSION OF AFFECTED REGULATIONS

**Decision Point 1: Amend regulation 18707.1(b)(1)(B)(i) and(ii) to delete the word "homeowner" and insert the term "residential property owner."** The above sections provide the "significant segment" threshold necessary to meet the first part of the "public generally" exception for an economic interest in real property as follows:

"(B) Real Property: For decisions that affect a public official's interest in real property, the decision also affects:

(i) Ten percent or more of all property owners or all homeowners in the jurisdiction of the official's agency or the district the official represents; or

(ii) 5,000 property owners or homeowners in the jurisdiction of the official's agency."

In the past, "households" was used as a third category to include "individuals who reside in a common owner-occupied and (*sic*) non-owner occupied residential dwelling." (*Furth* Advice Letter, No. A-99-035; *Brewer* Advice Letter, No. A-04-233). This option was removed from the "significant segment" prong of the "public generally" exception applicable to "real property interests" in 2000 because it included non-property owners and tended to cause confusion when applying the terms of the regulation. (See Final Adoption of Phase 2 Conflict of Interest Regulations Memorandum, November 28, 2000; *Brewer, supra.*)

However, the term "homeowner" has been defined as "an individual who owns residential property that is his or her domicile or principal place of residence." (*Furth, supra, Nerland* Advice Letter, No. I-02-059; *Doi* Advice Letter, No. I-04-076; *Brewer, supra.*) While deletion of the term "households," properly eliminated non-property owners from consideration as part of the "significant segment" it also, perhaps unintentionally, eliminated owners of residential property who rented their property to others, since, by virtue of the fact that the owner did not live on the property, he or she was not considered a "homeowner."

Because the value of a property, or a financial affect on a property, is not determined by who lives on the property, the exclusion of non-resident owners of residential property does not appear to have any rational basis for support. For example, assume a public official's residence is nearly identical to several other properties in the jurisdiction, and each property will be affected equally by the governmental decision. One-half of those properties are lived in by the owners, and one-half are rented out. Although the financial effects will be identical on all owners of the properties, under the current regulation only the owners who reside on, as opposed to rent, their properties may be counted toward the "significant segment".

This problem was presented in *Brewer, supra*, where a public official in the seaside community of Solana Beach was prevented from participating in a decision because he could not meet the "significant segment" test under the current definition of "homeowners." Although the official established that the governmental decision would affect a "significant segment" of residential properties in "substantially the same manner" as it would affect his property, because of the high number of rental properties in Solana Beach, and the fact that owners of rental properties could not be counted toward the "significant segment", he was unable to meet the "significant segment" test for "homeowners." (See Lisa A. Foster Letter dated August 22, 2005, to Commission, attached).

While residential rental property owners are included under the broader definition of all “property owners,” because this class also includes commercial, industrial, and all other types of property owners, the “ten percent or more” threshold for the “significant segment” is even more difficult to meet. The intent of the regulation appears to be to create two distinct groups in determining the “significant segment” for decisions affecting real property. The first group includes all real property owners, while the second group appears to concern residential property, but in actuality is limited to residential property in which the owner lives. Presumably, these classes reflect the fact that decisions affect residential property differently from other types of property.

However, by limiting the definition of “homeowners” to an individual who owns the home in which he or she lives, owners of non-owner occupied homes are excluded, even though the financial effects on an official’s residence are more properly measured against the financial affects on a similar non-owner occupied home.

The proposed amendments to regulation 18707.1(b)(1)(B) would substitute the term “residential property owners” for “homeowners,” and define residential property to include single-family homes, multi-family buildings consisting of two/four units or less, and condominiums.

**Staff Recommendation:** Staff recommends that the Commission adopt Decision Point 1 and apply the definition to both duplexes and fourplexes. Staff believes that providing and defining a separate term would be less confusing than redefining the term “homeowners.”

**Decision Point 2: Amend regulation 18707.1(b)(2) to provide a list of factors to be considered in determining the financial effects on real property.**

Staff received input at the interested persons’ meeting that suggested it would be helpful if the Commission provided a list of factors relevant in a public official’s determination of the comparable financial effects on his or her real property verses other properties in the “significant segment”. Decision Point 2 proposes a new subsection under the “substantially the same manner” test providing 13 factors to be considered in comparing properties when determining if the financially effects are similar.

Under the “public generally” exception, once a determination is made that a governmental decision will affect a “significant segment” as defined in regulation 18707.1(b)(1), the second prong of the test requires that the interests of the members of the ““significant segment” ” be affected in “substantially the same manner” as the interests of the public official for the exception to apply. This second prong is provided in regulation 18707.1(b)(2):

“(2) Substantially the Same Manner: The governmental decision will affect a public official’s economic interest in substantially the same

manner as it will affect the significant segment identified in subdivision (b)(1) of this regulation. The financial effects need not be identical for the official's economic interest to be considered 'financially affected' in 'substantially the same manner.'"

Essentially, what the regulation states is that once it has been determined that the property values of a group of people will be influenced by a governmental decision, the financial or monetary result from that influence must be substantially the same for the official's property as it is for the property of the group affected. For this reason, the Commission has advised that financial effects are measured in terms of overall dollar effects and not by fixed percentage effects. For example, a 10 percent overall increase on property values resulting from a governmental decision would result in substantially *different* financial effects on a \$5,000,000 home as opposed to a \$500,000 home. (See *Berger Advice Letter, supra*). The first sentence of Decision Point 2 codifies that advice.

The remainder of the proposed language in Decision Point 2 sets out factors to be considered in determining whether or not the financial effects resulting from the governmental decision are substantially similar for the official's property as they are for other property owners affected by the decision.

Factor 1 first considers the magnitude of the effect of the governmental decision. This factor takes two things into consideration. First, how much of an effect will the governmental decision have on property values within the jurisdiction? For example, a governmental decision to place covered structures over all bus stop benches in a city may have a relatively inconsequential effect on property values, even those located within 500 feet of a bus stop, whereas a decision to build a new arena for the Sacramento Kings would likely have a significant impact on property values in the area. This factor would examine how much of an impact the decision would have – the less the impact, the more likely the financial effects would be considered to be substantially the same.

The second consideration looks at the difference between the financial impact on the official's property and other properties affected by the decision. For example, if property values in the official's neighborhood are expected to increase by 10 percent as a result of the decision and by 5 percent in all other neighborhoods in the jurisdiction, properties in the other neighborhoods would have to be worth twice as much as the official's property to have the same overall financial effects.

Once the magnitude of the financial effect on property values from the governmental decision has been determined, factors 2 through 13 list the elements to be considered in determining what properties are financially affected in the same manner as the public official's property. In other words, if the governmental decision causes a ten percent increase on property values in a certain area in which the official resides, what other properties within that area are comparable to the public official's property, so that the overall financial effects on those properties are substantially the same?

The factors set forth under this decision point are among the major factors that a real estate appraiser would be expected to consider in comparing the similarities between different properties.

**Staff Recommendation:** Staff believes that the factors listed in the language contained in Decision Point 2 would provide some guidance to public officials in applying the “substantially the same manner” prong of the “public generally” exception and, for that reason, recommends that the Commission adopt Decision Point 2.

**Decision Point 3: Amend regulation 18707.1(b)(2) to provide a minimal range within which financial effects on real property are determined to be in “substantially the same manner.”**

While the Commission has quantified the term ““significant segment”,” the same is not true for the term “substantially the same manner.” For a variety of reasons, including the difficulty of developing a “bright line” rule for what it means to be affected in “substantially the same manner,” the Commission has consistently determined since 1975 that the term “substantially the same manner” should be applied on a case-by-case basis. (See Staff Memorandum to Commission, March 3, 2004.) The problem with this solution is: (1) no common guidance is provided that can be utilized by public officials in making this determination; (2) all cases must be examined on an individual basis; and (3) because no rule has been established to determine what financial effects are considered substantially the same, in many cases requesting Commission advice the financial effects are not even measured.

Staff believes that it is true that establishing a “bright line” rule for measuring what financial effects are considered to be in “substantially the same manner” would be difficult, if not impossible, to apply. However, staff also believes that a minimal range can be reasonably established and applied that would assist in making this determination in some cases. The language provided in Decision Point 3 is based on staff advice provided in the *Berger* letter, *supra*.

In *Berger*, the City of Santa Paula requested advice regarding the application of the “public generally” rule in a decision regarding the development of property that would have an impact on all residents of the city, including, to varying degrees, all of the five members of the city council. The request included an appraisal report that, to some extent, quantified the financial effects on owners of real property in Santa Paula.

Presented with facts indicating the financial effects of the governmental decision on the owners of real property within the “significant segment” (the entire city), and faced with making a determination as to what financial effects would be considered in “substantially the same manner,” Commission staff provided a range within which those financial effects would be considered to be substantially the same.



This range was determined by adopting a conservative figure, two-percent of the value of the official property, as the amount by which a financial effect on other properties could vary from the amount of the financial effect on the official's property and still be considered to be "substantially the same." The language presented in Decision Point 4 codifies this approach.

Under the formula established in Decision Point 4, an official would first determine the market value of his or her real property. To illustrate the application of this formula, let us assume the official's property is worth \$500,000. The next step would be to determine the financial effect of the decision on the official's property. Again, for purposes of this example, assume the public official provides evidence that the governmental decision will result in a three-percent increase on all properties within the "significant segment" affected. The financial effect of the governmental decision on the official's property would be \$15,000 (3% of \$500,000).

The next step determines the range, as stated above, by multiplying the value of the official's property by two-percent. In this example, because the official's property is valued at \$500,000, the range would be established to include any properties where the financial effect was within \$10,000 (2% X \$500,000) of the financial effect on the official's property. Because the financial effect on the official's property is \$15,000 as established in step two, the range would include any properties where the financial effect of the decision is between \$5,000 and \$25,000 ( $\$15,000 - \$10,000 = \$5,000$ ;  $\$15,000 + \$10,000 = \$25,000$ ).

In the final step, having established the range of the financial effects that are considered substantially the same, the official would then need to determine what properties are financially affected within that range. In the example given, we know that all properties will be affected by a positive three-percent, and that the three-percent increase must equal between \$5,000 and \$15,000 to be considered substantially the same. Therefore, all properties affected by the stated increase that are valued between approximately \$167,000 and \$833,000 are considered financially effected in "substantially the same manner" ( $\$5,000 \div .03 = \$166,666$ ;  $\$25,000 \div .03 = \$833,333$ ).

If the official can identify a sufficient number of properties within the "significant segment" affected by the three-percent increase that fall within the above range in property value, the "public generally" exception would apply. As stated in the language presented, this formula is not intended to be the exclusive means of determining what financial effects are considered to be substantially the same but, rather, to provide a minimum threshold for making that determination.

**Staff Recommendation:** Because staff believes that some guidance is necessary in determining what financial effects are considered to be substantially the same, staff recommends that the Commission adopt Decision Point 3.

**Decision Point 4: Amend regulation 18707.1(b)(2) to provide that if a governmental decision results in a fixed percentage increase or decrease affecting the values of all properties by the same percentage amount, the financial effects are considered to be in “substantially the same manner.”**

As stated above, financial effects have always been measured in terms of the dollar increase or decrease on the property resulting from the governmental decision rather than across-the-board percentage increases affecting all properties by the same percentage. Decision Point 4, if adopted, would change that policy.

In this decision point, the Commission is asked to consider whether or not equal percentage effects on properties of *all* values should be determined to be a financial effect in “substantially the same manner.” The simple argument for this point is that if all property values rise and fall as a result of general market conditions by certain percentages, are these properties not equally affected by those market conditions? If so, why should it be any different for properties affected by a governmental decision?

By analogy, if an employer offers its employees a five-percent salary increase, are not all the employees benefited equally? If shares of stock in a company increase by 10-percent, are not all shareholders benefited equally? If so, why should it be any different for percentages increases affecting real property?

The intent of this language is to explore taking a different direction in terms of applying the “substantially the same manner” test to percentage increases as to the value of real property. If the Commission is interested in exploring this approach, staff would need to conduct further analysis.

**Staff Recommendation:** Staff makes no recommendation at this time and seeks direction from the Commission as to whether further consideration should be given to this approach.

**Decision Point 5: Small Jurisdictions: Adopt regulation 18707.10 to provide a “public generally” exception applicable to real property owned by a public official that is used as his or her domicile in small jurisdictions.**

In February 2003, the Commission repealed a specialized form of the “public generally” exception applicable to small jurisdictions. The original regulation, regulation 18703.1 (see attached) adopted in October 1990, grew out of a concern from smaller jurisdictions about the impact of the new, definitive materiality regulations that had been adopted the year before. (Regulations 18702.1 through 18702.6.) The specific issue that resulted in the enactment of regulation 18703.1 was the application of regulation 18702.3, providing the materiality standard for ownership interests in real property, to the City of Signal Hill.

At that time, Signal Hill had a population of approximately 8,000 people and covered a land area of 2.35 square miles. (*Cosgrove* Advice Letter, No. A-89-120). The city attorney of Signal Hill found that when applying the 2,500 foot rule virtually all the public officials (council members and planning commissioners) resided within 2,500 feet of the site.

In response to Signal Hill's concerns and those of other small jurisdictions, regulation 18703.1 was developed to permit public officials to participate in decisions that affect their personal residences under certain limited circumstances. (See Staff Memorandum to Commission, October 23, 1995.)

At the inception of the small jurisdictions regulation the materiality standard for real property provided that the effect of a governmental decision was deemed to be material if an official's property was within 300 feet of the boundaries of the subject property, and not to be material if located beyond 2,500 feet of the boundaries. For property located between 300 feet and 2,500 feet, the official's property was materiality affected if its fair market value was increased by at least \$10,000, or its rental value was increased or decreased by \$1,000 over a 12-month period. The small jurisdiction exception applied only when the property was located in this middle ground. (For a complete discussion of the history and purpose of the "public generally" exception for small jurisdictions, see Staff Memorandum to Commission, August 23, 2002.)

The small jurisdiction regulation was amended several times and eventually renumbered to regulation 18703.1.

As part of the Phase 2 regulatory changes, the materiality standards for real property changed, and the 300 – 2,500 foot radius was eliminated. It was replaced with the current rule providing a presumption of materiality if the property was located within 500 feet of the subject of the governmental decision and a presumption of nonmateriality if the official's property was beyond 500 feet.

In February 2001 the small jurisdiction "public generally" exception was amended to conform with the Phase 2 changes, changing the 300 foot distance to 500 feet. In September 2002 the Commission began consideration of amending or deleting the small jurisdiction exception. The issue was framed as: "[s]hould regulation 18707.3, the 'public generally' exception applicable to small jurisdictions, be revised to revert to its pre-Phase 2 rule [300 feet]? In the alternative, have Phase 2 amendments created less need for the exception?" (Staff Memo, August 23, 2002, *supra*).

In examining these issues, staff received substantial input from representatives of small jurisdictions, who argued that the new 500-foot rule created a situation where the radius of 500 feet from each of the residences of their public officials encompassed much of the jurisdiction. These representatives stated that the 500-foot rule was too restrictive in small jurisdictions, forcing them to determine in many instances whether a public official may participate under the "public generally" exception. Because of the need to

gather material facts to examine financial effects in order to apply this exception taxed the limited resources of many small jurisdictions, they argued that the process was too burdensome. Oftentimes they were forced into applying the “legally required participation” exception, making the potential outcome of the decision subject to the “luck of the draw.”

While the elimination of the so called “donut rule” made it no longer necessary, in most cases, to examine financial effects on a public official’s property if it was located beyond 500 feet of the property that was the subject of the decision, it also expanded the minimum boundaries for applying the small jurisdiction exception from 300 feet to 500 feet. This 200 foot expansion is the source of continuing concerns from small jurisdictions as to the need for a special “public generally” exception for those jurisdictions.

The other result of the Phase 2 amendments was to effectively eliminate any practical use for the small jurisdiction “public generally” exception, since it was only applicable to property located in the middle ground – between 500 and 2,500 feet. Because the middle ground was eliminated, and the new rule created a presumption that property located beyond 500 feet from the governmental decision was not materially affected, absent special circumstances rebutting that presumption, there was no longer any practical use for the exception given the new radius.

As a result, the Commission explored the alternatives of reducing the radius for presumed materiality for small jurisdictions to the original 300 feet or eliminating the small jurisdictions rule altogether. Commission staff, including the Enforcement Division, argued against creating a new rule for public officials in small jurisdictions with residences beyond 300 feet but within 500 feet of the subject property, because it would allow them to participate in decisions in which officials in larger jurisdictions would be prohibited from participating in despite the existence of the same factors. In the end, the Commission decide to repeal the “public generally” small jurisdictions regulation.

Since that time, representatives of small jurisdictions have expressed concern as to the effects of this action. At the interested persons’ meeting, representatives of small jurisdictions discussed the difficulties and costs associated with applying the “public generally” exception and the frequency in which this issue arises because of the increase in distance of the materiality standard from 300 to 500 feet. They have asked that the Commission reconsider this issue as part of its examination into revising the “public generally” rules.

For that reason, staff offers the proposed language in Decision Point 5 addressing the issue. The language offered is a modified version of the original language creating the “public generally” exception for small jurisdictions and is preliminary in nature. Staff seeks Commission direction as to whether or not these issues should be further explored, and proposes to return with developed language at a second pre-notice meeting in

November. In the interim, staff proposes to hold a second interested persons' meeting devoted strictly to this issue to illicit further input.

**Staff Recommendation:** Staff makes no recommendation at this time and seeks direction from the Commission as to whether further examination should be conducted on this subject.

#### Attachments

Letter from Lisa A. Foster, dated August 22, 2005  
Proposed amendments to regulation 18707.1  
Proposed regulation 18707.10

Legal: public generally memo 8-24-06.doc